



July 7, 2022

VIA ELECTRONIC MAIL TO rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary, U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2022-015
Rule Proposal to Include Firm Designation as a Restricted Firm on BrokerCheck

Dear Ms. Countryman:

Thank you for the opportunity to comment on SR-FINRA-2022-015 (the Proposal), which would include a firm's designation as a restricted firm on BrokerCheck. We are law professors who focus our research, teaching, and service on retail investor protection. We teach corporate and securities law, securities arbitration, dispute resolution, and professional regulation. We have represented retail investors who have been harmed by financial professionals, including those whose BrokerCheck reports would denote association with a restricted firm if the Proposal is approved.¹ We have written extensively on the need to enhance disclosure and transparency, the Central Registration Depository, and BrokerCheck.² We serve on advisory boards related to retail investor issues.³ Our experience and expertise uniquely position us to comment on the Proposal. We support the Proposal and urge its adoption. In addition, we recommend future consideration of additional BrokerCheck disclosures relating to restricted firm status.

Adopting the Proposal Would Increase Retail Investor Protection

Disclosure plays a significant role in investor protection within our securities regulation framework, including by providing information that investors are strongly encouraged to review and rely upon when

¹ Professor Lazaro is the Director of the St. John's University School of Law Securities Arbitration Clinic. Prior to joining Drexel Kline Law, Professor Iannarone founded the Georgia State Law Investor Advocacy Clinic.

² See, e.g., Christine Lazaro & Albert Copeland, *An Overview of BrokerCheck and the Central Registration Depository*, 28 PIABA B. J. 425 (2021) (primer on CRD and BrokerCheck for new securities arbitration attorneys); Christine Lazaro, *Has Expungement Broken BrokerCheck?*, 14 J. OF BUS. & SEC. LAW 123 (2015) (arguing for reform of expungement process to ensure BrokerCheck serves investor protection aims); Charlotte Alexander & Nicole G. Iannarone, *Winning, Defined? Text-Mining Arbitration Decisions*, 42 CARDOZO L. REV. 1695 (2021) (describing transparency via arbitration awards and BrokerCheck information and recommending additional disclosures to improve retail investor protection); Nicole G. Iannarone, *Structural Barriers to Inclusion in Arbitrator Pools*, 46 WASH. L. REV. 1389 (2021) (recommending transparency in arbitrator selection process to increase investor protection); Nicole G. Iannarone, *Finding Light in Arbitration's Dark Shadow*, 4 UNLV L. FORUM 1 (2020) (describing investor protection aims of disclosure).

³ Professor Iannarone is the Chair of FINRA's National Arbitration and Mediation Committee (NAMC) and a member of the CFP Board's Public Policy Council. Professor Lazaro is a member of the Commission's Investor Advisory Committee, FINRA's Investor Issues Committee, and the CFP Board's Standards Resource Commission.

choosing a financial professional. BrokerCheck is a critical tool in this regime. According to FINRA, “BrokerCheck helps you [investors] make informed choices about brokers and brokerage firms.”⁴ BrokerCheck was improved by the adoption of a rule change disclosing a firm’s status as a taping firm.⁵ Disclosure of restricted firm status would further improve BrokerCheck and allow retail investors to make more informed choices and ask pertinent questions to financial professionals before engaging them. Although we believe, as more fully described below, that additional steps should be taken, we recommend adopting the Proposal as written so as not to delay the increased investor protection that will result from it.

Recommended Future BrokerCheck Enhancements Related to Restricted Firm Status

We respectfully recommend that FINRA and the SEC explore additional future enhancements related to restricted firms. First, we recommend that FINRA provide a plain English explanation of what restricted firm designation means on the BrokerCheck report if a firm is so designated. We do not believe a link to the rule on its own would be enough for unsophisticated retail investors to understand the importance of the disclosure and make an informed decision about working with such a firm. Second, we recommend that a prior designation as a restricted firm be included in BrokerCheck. A historic record of when – and how many times – a firm has been a restricted firm assists investors in making informed decisions and may also disincentivize recidivism. If a prior restricted firm status is disclosed via BrokerCheck, firms and associated persons will be incentivized to reform and not engage in future misconduct. For example, a lengthy period of time after a restricted firm designation has been removed may signal that a firm has made significant positive changes. Additionally, if historic restricted firm status is disclosed, firms will be incentivized to ensure that they are not so designated in the future because multiple such disclosures may impact investors’ decisions to work with them.

Thank you for the opportunity to comment on the Proposal. Retail investor protection will be enhanced if BrokerCheck reports contain disclosure of restricted firm status. In addition, we recommend consideration of the role that disclosure of prior status as a restricted firm may have on increasing investor protection and reducing recidivism. Please do not hesitate to contact us if we can provide additional information that may be of assistance.

Respectfully submitted,

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⁴ FINRA, *BrokerCheck*, <https://brokercheck.finra.org>.

⁵ See FINRA Rule 8312(b)(2)(F) (effective May 1, 2021).

⁶ The authors’ respective institutional affiliations are provided for identification purposes only. The views expressed herein are the authors’ own.